

*Before Satish Kumar Mittal and Daya Chaudhary, JJ.*

**BALJIT SINGH,—Petitioner**

*versus*

**STATE OF PUNJAB AND OTHERS,—Respondents**

CWP No. 13643 of 2008

22nd August, 2008

*Constitution of India, 1950—Arts. 226 & 243-O(b)—Punjab Panchayati Raj Act, 1994—S.13—Punjab Panchayat Election Rules, 1994—RI.45(2)—Maintainability—Respondent No. 5 elected as Sarpanch—Challenge thereto—Alternative remedy—Election petition—Whether High Court has jurisdiction under Art. 226 to entertain a petition in view of availability of remedy of election petition—Art. 243-O(b) provides that no election to any Panchayat shall be called in question except by an election petition—Petition dismissed with liberty to petitioner to avail remedy of election petition.*

*Held*, that a remedy of election petition is available to the petitioner to challenge the election of a Sarpanch of the village Gram Panchayat on the grounds mentioned in Section 89 of the Election Commission Act. To strengthen the self Government system, certain amendments were introduced in Part IX of the Constitution by the Constitution (Seventy-third Amendment) Act, 1992 for the constiution of panchayats. Article 243-O(b) of the Constitution of India provides that 'Notwithstanding anything in this Constitution' no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State. The High Court does not lack the jurisdiction to entertain the petition and to issue appropriate direction therein. However, the extra ordinary power under Article 226 of the Constitution of India should be exceptionally and rarely exercised to the limited extent. The present case does not fall under any of the said exceptions. The petitioner has the remedy of election petition to challenge the election of respondent No. 5 to the

office of Sarpanch of Gram Panchayat, Village Bhamian Khurd, Block Ludhiana-2, Tehsil and District Ludhiana.

(Paras 8 & 22)

Kanwaljit Singh, Senior Advocate, M.L. Saggar, Senior Advocate, with Mansur Ali, Advocate, *for the petitioner.*

Amol Rattan Singh, Addl. A.G., Punjab, N.S. Virk, Addl. A.G., Punjab and Parveen Goyal, *Senior DAG, Punjab.*

***SATISH KUMAR MITTAL, J.***

(1) The petitioner, who is a sitting Panch and was the candidate for the office of Sarpanch of Gram Panchayat, Village Bhamian Khurd, Block Ludhiana-2, Tehsil and District Ludhiana, has filed this petition under Article 226/227 of the Constitution of India for quashing the election of respondent No. 5 as Sarpanch of the aforesaid Gram Panchayat, being illegal, arbitrary and contrary to the provisions of the Punjab Panchayati Raj Act, 1994 (hereinafter referred to as ‘the Panchayati Raj Act’); and for issuing a direction to the respondents to hold fresh election by way of secret ballot, as so observed by this Court in order dated 16th July, 2008 (Annexure P-2) passed in CWP No. 12006 of 2008.

(2) In the present case, after the election of the Panches of Gram Panchayat, Village Bhamian Khurd was duly notified by the Government and after the taking of oath or affirmation under Section 13 of the Panchayati Raj Act, the Deputy Commissioner, Ludhiana authorised respondent No. 4 to call the meeting of the Members of the Gram Panchayat, as laid down under Section 13-A of the Panchayati Raj Act and to hold the election of Sarpanch of the Gram Panchayat. Respondent No. 4 called the said meeting on 19th July, 2008. However, since the quorum of the meeting was not complete, as provided under Rules, 45 (2) of the Punjab Panchayat Election Rules, 1994 (hereinafter referred to as ‘the Panchayat Election Rules’) 1994 the said meeting was postponed. Thereafter, the meeting for the aforesaid purpose was again called for 25th July, 2008, in which respondent No. 5 was declared elected as Sarpanch of the Gram Panchayat. In this petition, the grouse

of the petitioner is that no notice of the second meeting held on 25th July, 2008 was issued to him and other Panches of the Gram Panchayat, namely Kulwinder Kaur and Tribhuwan Prashad. Without any notice to these Panches, election of the office of Sarpanch was conducted by respondent No. 4 in a clandestine manner. It is also alleged that even the election of the office of Sarpanch was conducted without secret ballot, as directed by this Court in order dated 16th July, 2008 (Annexure P-2), passed in CWP No. 12006 of 2008. It has also been alleged that respondent No. 4 had postponed the meeting on 19th July, 2008 on the ground that quorum of the Gram Panchayat was not complete. In this regard, it is alleged that amendment to Rule 45 of the Panchayat Election Rules, authorising the Presiding Officer to adjourn the meeting, on the ground of quorum, made by the Government, is illegal and contrary to the provisions of the Panchayati Raj Act. Therefore, the election of respondent No. 5 is alleged to be illegal, null and void and is liable to be quashed.

(3) At the time of motion hearing, on a question asked by the Bench regarding the maintainability of the writ petition, in view of the availability of alternative remedy of election petition, Shri Mansur Ali, Advocate, learned counsel for the petitioner, and Shri Kanwaljit Singh, Senior Advocate as well as Shri M.L. Sagar, Senior Advocate, who are counsel in the connected petitions, submitted that as far as election to the office of Sarpanch is concerned, under the Panchayati Raj Act and the Punjab State Election Commission Act, 1994 (hereinafter referred to as 'the Election Commission Act') as well as the Rules made thereunder, no remedy of election petition has been provided. On this aspect, we sought the assistance of Shri Amol Rattan Singh, Shri N.S. Virk, Additional Advocates General, Punjab and Shri Parveen Goyal, Senior Deputy Advocate General, Punjab, who were present in the Court, on behalf of the Government. They submitted that even for the election to the office of Sarpanch of the village Gram Panchayat, a remedy of election petition has been provided under Section 76 of the Election Commission Act on the grounds mentioned in Section 89 of the said Act. Therefore, according to them, in view of the availability of the remedy of election petition, the instant writ petition, filed by the petitioner, in which disputed questions of facts have been raised

challenging the election of respondent No. 5 as Sarpanch of Gram Panchayat, village Bhamian Khurd, is not maintainable.

(4) We have heard the arguments of learned counsel for the parties on this preliminary issue.

(5) Shri Kanwaljit Singh, Senior Advocate, Shri M.L. Saggar, Senior Advocate and Shri Mansur Ali, Advocate, on behalf of the petitioner submitted that the provisions of Section 76 of the Election Commission Act, providing a remedy of election petition, does not apply to the election for the office of Sarpanch of the Village Gram Panchayat. This provision is applicable only to the election of Panches, who are to be elected by a direct election. Since the Sarpanch is nominated/elected by the elected Panches in the meeting, which is convened by the Deputy Commissioner and not by the State Election Commission, therefore, the provisions of Section 76 of the Election Commission Act does not apply to the nomination/election to the office of Sarpanch. Learned counsel further submitted that earlier under clause (az) of Section 2 of the Panchayati Raj Act, "Sarpanch" means Sarpanch of the Gram Panchayat elected under Section 10 of this Act, and Section 10 provides the constitution of Gram Panchayat, including the Sarpanch. But now, by the Punjab Panchayati Raj (Amendment) Act, 2008 an amendment has been made in clause (zt), of Section 2 as well as Section 10 of the Panchayati Raj Act. According to this amendment, in Section 2, in clause (zt), for the word and figure "section 10". the word, figure and letter "section 13-A" has been substituted. Correspondingly, in sub-section (1) of Section 10, the words "a Sarpanch and" have been omitted. According to the learned counsel, the net effect of this amendment is that now, the election of the Member Gram Panchayat, which is a direct election, can only be challenged by election petition, and election to the office of Sarpanch, which is an indirect election, cannot be challenged by way of election petition. learned counsel submitted that so far as the provisions of the Election Commission Act are concerned, the same are applicable only to the elections conducted by the Punjab State Election Commission and not to the elections conducted by the Punjab State Election Commission and not to the elections conducted by the Deputy Commissioner or any other officer of the State Government authorized by him. Learned counsel submitted that the Punjab State

Election Commission only conducts the election of the Member Gram Panchayat under Section 10 of the Panchayati Raj Act, whereas the elections to the office of Sarpanch are being conducted by the Deputy Commissioner under Section 13-A of the Panchayati Raj Act. Therefore, against the election to the office of Sarpanch, no election petition is maintainable. It is further submitted that as per Section 71 of the Election Commission Act, the language used is 'general election' of the Panchayats and the same would mean direct elections, presently which are only of Panches in the year 2008. Therefore, the indirect election of Sarpanch cannot be made subject matter of the election petition before the Election Tribunals. Learned counsel further submitted that as per clause (zj) of Section 2 of the Panchayati Raj Act "Panchayati" means a Gram Panchayat, Panchayat Samiti and Zila Parishad constituted under the Act. Learned counsel submitted that the Panchayat only constitutes the elected Panches, whose election has been notified under Section 10 of the Panchayati Raj Act, and not the Sarpanch, who is elected under Section 13-A of this Act. It is further argued that Section 71 of the Election Commission Act is to be read in conjunction with the definition of "Panchayat". If it is so read, then it would mean a candidate whose result has been declared by the Election Commission under Sections 69 and 70 of the Election Commission Act, which are only the Panches, who fall under the definition of "returned candidate" as per section 2(s) of this Act. In view of this, it is submitted that election of the Sarpanches would not be amenable to the jurisdiction of the Tribunal, because in the definition of "Panchayat", the word 'Sarpanch' has been excluded. It is further submitted that the Election Tribunal has been constituted under Section 73 of the Election Commission Act in consultation with the Election Commission. Therefore, only those elections can be challenged before the Tribunal, which were got conducted by the Election Commission and not the ones, which have been get conducted by the Deputy Commissioners of the State Government under Section 13-A of the Panchayati Raj Act.

(6) Learned counsel further submitted that even if this Court comes to the conclusion that a remedy of election petition to challenge the election to the office of Sarpanch is available to the petitioner, even then in an exceptional case, this Court can entertain the writ petition

under Article 226 of the Constitution of India, which is an extra ordinary remedy, and clause (b) of Article 243-O of the Constitution of India as well as Section 74 of the Election Commission Act may not bar the extra ordinary writ jurisdiction of the High Court under Article 226 of the Constitution of India. In support of their contentions, learned counsel for the petitioner relied upon **K. Venkatachalam versus A. Swamickan (1)**, **Lal Chand versus State of Haryana and others (2)**, **Sudesh Kumar Aggarwal versus State of Punjab (3)**, and **S. Fakruddin and others versus The Govt. of A.P. and others (4)**.

(7) On the other hand, Shri Amol Rattan Singh, Shri N.S. Virk, Additional Advocates General, Punjab, and Shri Parveen Goyal, Senior Deputy Advocate General, Punjab, while referring to the various provisions of the Panchayati Raj Act, the Election Commission Act and the Panchayat Election Rules, submitted that even against the election to the office of Sarpanch, held in the meeting of the Member of the Gram Panchayat, convened by the Deputy Commissioner under Section 13-A of the Panchayati Raj Act read with Rule 45(1) of the Panchayat Election Rules, an election petition is maintainable. The election of Sarpanch cannot be questioned, except by an election petition under Section 76 of the Election Commission Act presented to the Election Tribunal in such manner, as is provided under the Election Commission Act on the grounds mentioned in Section 89 of this Act. Learned counsel, after having instructions from the Director, Panchayats, Punjab, who was present in the Court, stated that election petition against the election to the office of Sarpanch is maintainable and if any such petition is presented, the same will be entertained. Learned counsel submitted that as per clause (zg) of section 2 of the Panchayati Raj Act “member” means a member of a Gram Panchayat, and includes Sarpanch of a Gram Panchayat. They also referred to clause (zi), which defines “Panch” means a member of the Gram Panchayat elected under this Act and includes a Sarpanch. Reference to clause (zt) was also made, which defines, “Sarpanch” means Sarpanch of the Gram Panchayat elected

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- (1) AIR 1999 S.C. 1727
  - (2) 1998 (2) PLR 640 (F.B.)
  - (3) AIR 2001 (Pb. & Hy.) 197
  - (4) AIR 1996 A.P. 37

under Section 13-A of this Act. Learned counsel further referred to clause (d) of Section 2 of the Panchayat Elections Rules, which defines "Election" means election of a Panch, Sarpanch of a Gram Panchayat. They further referred to Section 74 of the Election Commission Act, which provides that "No election shall be called in question except by an election petition presented in accordance with the provisions of this Chapter." Learned counsel for the respondents-State further submitted that under Section 76 of the Election Commission Act, an election petition can be filed, challenging the election of the Panch as well as Sarpanch on the grounds mentioned in Section 89 of the said Act. Learned counsel, while referring to the decision of the Supreme Court in **N.P. Punnuswami versus Returning Officer, Namakhal Constituency, Namakhal, Salem District (5)**, **Mohinder Singh Gill and another versus The Chief Election Commissioner, New Delhi and others (6)**, **Krishna Ballabh Prasad Singh versus Sub Divisional Officer, Hilsa-cum-Returning Officer (7)**, **Election Commission of India versus Shivaji (8)** and a Constitutional Bench decision of this Court in **Prithvi Raj versus State Election Commission, Punjab and others (9)**, submitted that the petitioner cannot invoke the jurisdiction of this Court under Article 226 of the Constitution of India, in view of Article 243-O(b) of the Constitution and section 74 of the Election Commission Act, and the only remedy available to the petitioner is to file an election petition under Section 76 on the grounds mentioned in Section 89 of the Election Commission Act. Learned counsel further submitted that though exclusion of the jurisdiction of the Court provided under Article 243-O of the Constitution of India read with Section 74, of the Election Commission Act does not exclude the extra ordinary writ jurisdiction of the High Court under Article 226 of the Constitution of India, but the High Court, in an exceptional circumstance, can entertain a petition, challenging the election of the Panchayat. Learned counsel appearing on behalf of the State submitted that the instant case is not a case, where this Court should exercise the extra ordinary writ

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(5) AIR 1952 S.C. 64

(6) AIR 1978 S.C. 851

(7) AIR 1985 S.C. 1746

(8) AIR 1988 S.C. 61

(9) 2007 (3) RCR (Civil) 817

jurisdiction under Article 226 of the Constitution of India for setting aside the election of respondent No. 5 in view of the availability of the remedy of election petition.

(8) After hearing learned counsel for the parties and considering their rival submissions and the various provisions of the Panchayati Raj Act, the Election Commission Act and the Panchayat Election Rules, we are of the opinion that a remedy of election petition is available to the petitioner to challenge the election of a Sarpanch of the village Gram Panchayat on the grounds mentioned in Section 89 of the Election Commission Act. To strengthen the self Government system, certain amendments were introduced in Part IX of the Constitution by the Constitution (Seventy-third Amendment) Act, 1992, for the constitution of Panchayats in Article 243 (b), a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level is defined as 'Gram Sabha'. Clause (d) of Article 243 defines 'Panchayat' means an institution (by whatever name called) of self-government constituted under Article 243B, for the rural areas. Article 243B (1) provides that "There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part." Article 243C further provides for composition of Panchayats. Sub-clause (3) (a) provides for the representation of the Chairpersons of the Panchayats at the villages level, Sub-clause (4) further provides that the Chairperson of a Panchayat and other members of a Panchayat whether or not chosen by direct election from territorial constituencies in the Panchayat area shall have the right to vote in the meetings of the Panchayats. It is left to the Legislature to provide by law the powers and functions to be exercised by the Gram Sabha. Article 243K of the Constitution provides for the elections to the Panchayats. It provides that the superintendence, direction and control of the preparation of election rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor. Article 243-O (b) of the Constitution of India provides that 'Notwithstanding anything in this Constitution' no election to any Panchayat shall be called in question except by an



election petition presented to such authority and in such manner as is provided for by or under any Law made by the Legislature of a State.

(9) In pursuance of the aforesaid amendment made, the State of Punjab enacted the Panchayati Raj Act and formulated Rules thereunder to establish a three-tier Panchayati Raj system in the State of Punjab with elected bodies at the village, Block and District levels, for greater participation of the people and more effective implementation of the Panchayati Raj system; and has also enacted the Election Commission Act for constitution of the State Election Commission and for vesting the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of all elections to the Panchayats and Municipalities in the State of Punjab.

(10) Section 10(1) of the Panchayati Raj Act provides for constitution of the Gram Panchayat. It provides that every Gram Sabha shall elect from amongst its members a Gram Panchayat for the Gram Sabha area bearing the name of its Gram Sabha. Sub-section (2) further provides that every Gram Panchayat constituted under this section shall be notified by its name in the Official Gazette. Section 13 provides that every election of a Panch shall be notified by the State Government in the Official Gazette and no member shall enter upon his duties until his election has been so notified and he has taken an oath or affirmation as specified in Schedule I. Section 13-A further provides that the Deputy Commissioner or any officer or official of the State Government, authorized by him in this behalf shall call that first meeting of the Gram Panchayat in such manner, as may be prescribed, as soon as, the election of all Panches is notified, to elect the Sarpanch from amongst them. Section 2, Clause (zj) defines "Panchayat" means a Gram Panchayat constituted under this Act Clause (zg) defines "member" means a member of a Gram Panchayat and includes Sarpanch of a Gram Panchayat, Clause (zi) defines "panch" means a member of the Gram Panchayat elected under this Act and includes a Sarpanch Clause (zt) defines "Sarpanch" means Sarpanch of the Gram Panchayat elected under Section 13-A of this Act.

(11) Section 2 Clause (d) of the Panchayat Election Rules defines "Election" means election of a Panch, Sarpanch of a Gram

Panchayat. Section 74 of the Election Commission Act provides that no election shall be called in question except by an election petition presented in accordance with the provisions of this Chapter. Section 76 provides the procedure for presentation of election petition and Section 89 provides for the grounds, on which an election petition can be filed before the Election Tribunal constituted under the Act. Section 89 is re-produced below :—

**89. Grounds for declaring election to be void.**—(1) Subject to the provisions of sub-section (2), if the Election Tribunal is of the opinion,—

- (a) that on the date of his election, a returned candidate was not qualified, or was disqualified to be chosen to fill the seat under the Constitution of India or under this Act; or
- (b) that any corrupt practice has been committed by a returned candidate or his election agent or by other person with the consent of a returned candidate or his election agent; or
- (c) that any nomination has been improperly rejected ; or
- (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected,—
  - (i) by the improper acceptance of any nomination; or
  - (ii) by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent; or
  - (iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void; or
  - (iv) by any non-compliance with the provisions of the Constitution of India or of this Act or of any rules or orders made under this Act ;

the Election Tribunal shall declare the election of the returned candidate to be void.

- (2) If in the opinion of the Election Tribunal, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the Election Tribunal is satisfied,—
- (a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice as committed contrary to the orders, and without the consent, of the candidate or his election agent ;
  - (b) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and
  - (c) that in all other respects, the election was free from any corrupt practice on the part of the candidate or any of his agent ;
- then the Election Tribunal may decide that the election of the returned candidate is not void.
- (3) In this section, the expression ‘agent’ has the same meaning as assigned to it in Explanation (1) given under clause (9) of section 108, but does not include election agent.”

(12) After analysing the aforesaid various provisions, we are of the opinion that the Sarpanch is also a part of the Panchayat, who is to be elected under Section 13-A of the Panchayati Raj Act by the Members of the Gram Panchayat in a meeting to be convened by the Deputy Commissioner, after the election of all the Panches is notified. As per Rule 45(7) of the Panchayat Election Rules, if there are two or more candidates for a seat of Sarpanch, the votes of the members, present at the meeting, shall be taken by ballot and thereafter, a copy of the result of election, so held, shall immediately, be sent by the concerned officer, conducting election to the District Electoral Officer, the Election Commission and the State Government. Sub-rule (2) further provides that quorum of the first meeting to be held to elect the Sarpanch of the Gram Panchayat shall be two-third of the total members of the

Gram Panchayat and if at the first meeting, there is no quorum as specified in sub-rule (2), the Presiding Officer shall adjourn the meeting. But there will be no quorum for the second meeting. A candidate for the seat of Sarpanch will be declared elected if he seeks majority of votes of the members present in the meeting and after the election, name of the elected Sarpanch is to be notified. After his election, the Sarpanch shall take an oath. Section 14 of the Panchayati Raj Act provides that term of the offices of Sarpanch and Panch of a Gram Panchayat shall co-terminate with the term of the Gram Panchayat. Section 19 provides for no confidence motion against Sarpanch. Section 20 provides for suspension and removal of Panch and Sarpanch on the grounds mentioned therein. From reading of all these provisions, it emerges that if a Sarpanch is elected under the Panchayati Raj Act by the Panches, he can only be removed by passing no confidence motion against him under Section 19 or by the Director under Section 20 on the ground mentioned therein.

(13) The Election Commission Act has been enacted by the State Legislature for establishing a State Election Commission who is to supervise, direct and control the conduct of all elections to the Panchayats and Municipalities, in the State of Punjab, and also to provide all matters relating to, or ancillary or in connection with the elections to the Panchayats and Municipalities, in terms of the provisions of Parts IX and IX-A of the Constitution of India. Section 210 of the Panchayati Raj Act clearly lays down that it is the responsibility of the Election Commission to conduct all the elections of the Panchayat. The Panchayat constitutes the Panches as well as the Sarpanch. Merely because meeting of the Panches is being convened by the Deputy Commissioner under Section 13-A of the Panchayati Raj Act does not mean that the State Election Commission has no control over the election of the Sarpanch. The election of Sarpanch is part and parcel of the election of the Gram Panchayat. Therefore, it cannot be said that the provisions of the Election Commission Act are not applicable to the election of the Sarpanch. Hence, we do not find any force in the contention of learned counsel for the petitioner, that since the election of Sarpanch is indirectly conducted from amongst the members of the Gram Panchayat in a meeting convened by the Deputy Commissioner,

therefore, the provisions of the Election Commission Act are not applicable.

(14) Clause (b) of Article 243-O of the Constitution of India clearly provides that 'Notwithstanding anything in this Constitution' no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any Law made by the Legislature of a State. The State Legislature has enacted the Election Commission Act and Section 74 provides that "No election shall be called in question except by an election petition presented in accordance with the provisions of this Chapter." Section 76 provides a remedy of election petition to challenge the election to the Panchayat by presenting a petition on the grounds mentioned in Section 89 of the said Act. In our opinion, the Sarpanch is part and parcel of the Panchayat. Therefore, an election to the office of Sarpanch of a Gram Panchayat can only be challenged by filing an election petition under Section 76 of the Election Commission Act on the grounds mentioned in Section 89 of the said Act. Section 89 provides for various grounds, on which the Election Tribunal can declare the election of a returned candidate to be void.

(15) The contention of learned counsel for the petitioner that since the election to the office of Sarpanch is an indirect election, therefore, the said election cannot be challenged by filing an election petition, cannot be accepted. Once the Panchayat has been established under the Panchayati Raj Act and a valid Panchayat has been constituted under Section 10 and its elected members in their meeting have further elected the Sarpanch as per the procedure provided under section 13-A of the said Act, election of the elected Sarpanch can be questioned only by way of election petitions, as provided under Section 76 of the Election Commission Act.

(16) Learned counsel for the petitioner have relied upon a Division Bench decision of this Court in **Shimla Rani and others versus State of Punjab and others (10)**, in support of their contention that the remedy of election petition to challenge the election of Sarpanch is not available. In the said decision, it has been held by this Court

that no remedy has been provided under the Election Commission Act to challenge the election of the office bearers of the Nagar Panchayat/ Municipalities. In the said judgment, the provisions of the Punjab Municipal (President and Vice-President) Election Rules, 1994, under which election to the office of President and Vice-President of Nagar Panchayati/Municipality was to be conducted, have been considered. In our view, the said decision is not applicable in case of election of the Sarpanch of a Gram Panchayat. In the said judgment, the provisions of the Punjab Municipal (President and Vice-President) Election Rules, 1994 were in question, which were held to be applicable to the election of Member of Municipalities and not to the office bearers, whereas Rule 50 of the Panchayat Election Rules specifically provides that election petition under Section 76 of the Election Commission Act shall be presented to the Election Tribunal. Further, in para 6 of the said judgment, it has been noticed that counsel for the petitioner in that case, to strengthen his argument that there is no mention of election of the office-bearers in the Punjab Municipal (President and Vice-President) Election Rules, 1994, made reference to the Panchayat Election Rules, wherein composite provision has been made to lay challenge to the election of members to the Panchayat (which includes Panchayat Samiti and Zila Parishad) Punjab and also its office-bearers. Therefore, the said judgment was given in case of election of the office-bearers of the Municipalities and the same has no bearing on the present controversy.

(17) Now, the question remains for consideration is whether the present petition is to be entertained or not, in view of the availability of the alternative remedy of election petition; and whether the bar created under clause (b) of Article 243-O of the Constitution of India as well as Section 74 of the Election Commission Act is applicable to the ordinary jurisdiction of the Courts or to the extra ordinary jurisdiction of the High Court under Article 226 of the Constitution. The Supreme Court in **N.P. Punnuswami's case** (*supra*), after considering the bar created by Article 329 of the Constitution for challenging the election to the Member of the Legislative Assembly has arrived at the following conclusions :—

“(1) Having regard to the important functions which the legislatures have to perform in democratic countries,

it has always been recognized to be a matter of first importance that elections should be concluded as early as possible according to time-schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted.

- (2) In conformity with the principal, the scheme of the election law in this country as well as in England is that no significance should be attached to anything which does not affect the “election”, and if any irregularities are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed, would have the effect of vitiating the “election” and enable the person affected to call it in question, they should be brought up before a special tribunal by means of an election petition and not be made the subject of a dispute before any Court while the election is in progress.”

In this judgment, it was held that Article 329 (b) of the Constitution was primarily intended to exclude or oust the jurisdiction of all courts in regard to electoral matters and to lay down the only mode to which an election could be challenged. It was said that the sole remedy for aggrieved party, if he wants to challenge the election, is an election petition. In **Mohinder Singh Gill’s case** (*supra*), the Supreme Court, while holding that the sole remedy is an election petition, observed as under :—

“Under Article 329 (b) the sole remedy for an aggrieved party, if he wants to challenge any election, is an election petition and this exclusion of all other remedies includes constitutional remedies like Article 226 because of the non-obstante clause. If what is impugned is an election the ban operates provided the proceeding “calls it in question” or puts it in issue, not otherwise. The paramount policy of the Constitution-makers in declaring that no election shall be

called in question except the way it is provided for in Article 329 (b) and the Representation of the People Act, 1951, shows that the Constitution and the Act should be read as an integrated scheme. The reason for postponement of election litigation to the post-election stage is that elections shall not unduly be protracted or obstructed. The speed and promptitude in getting due representation for the electors in the legislative bodies is the real reason. It is not every decision sought and rendered that will amount to "calling in question" an election. There are two types of decisions and two types of challenges. The first relates to proceedings which interfere with the process of election and the second accelerates the completion of the election and acts in furtherance of an election. Anything done towards the completion of the election proceedings, such as a decision by a returning officer on objections made to any nomination, can by no stretch of reasoning be described as questioning the election. The plenary bar of Article 329 (b) rests on two principles : (i) the peremptory urgency and prompt engineering of the whole election process without intermediate interruptions by way of legal proceedings challenging the steps and stages in between the commencement and the conclusion; and (ii) the provision of the special jurisdiction which can be invoked by an aggrieved party at the end of the election excludes the other forms, the right and remedy being creatures of the statute and controlled by the Constitution. The conclusion is; therefore, irresistible that jurisdiction under Article 226 cannot consider the correctness, legality or otherwise of the direction for cancellation integrated with the re-poll because the *prima facie* purpose of such a re-poll was to restore a detailed poll process and to complete it through the salvatory effect of a re-poll. Whether in fact or in law the order is validly made by the Election Commission or is violative can be examined later by the High Court as the Election Tribunal. If the regular poll, for some reason, has failed to reach the goal of choosing the returned



candidate and to achieve this object a fresh poll (not a new election) is needed, it may still be a step in the election. Hence, the writ application, challenging the cancellation coupled with re-poll, amounts to calling in question a step in election and is, therefore, barred by Article 329 (b). (If no re-poll had been ordered here the legal perspective would have been different.)”

(18) In **Krishna Ballabh Prasad Singh’s case** (*supra*), it was held by the Supreme Court that after the declaration of the result in Form 21-C of the Conduct of Election Rules, 1961, the only remedy available to the aggrieved party is to file an election petition. In that case, a certificate of election in Form 22 under Rule 66 was granted to the petitioner but the declaration in Form 21-C was not prepared under Clause (a) of rule 64 and sent to the authorities required thereunder and the Returning Officer, on discovering that the ballot papers of one booth had not been counted, took those votes into account and thereafter issued a notice cancelling the election of the petitioner and declaring the respondent to be the successful candidate and a declaration in Form 21-C was then prepared and a fresh certificate in Form 22 was issued. In that situation, it was held that the only remedy for the respondent, who was earlier given a certificate in Form 22 declaring him as elected, is to file as election petition. Similar view has been taken in **Shivaji’s case** (*supra*). In **Anugrah Narain Singh and another versus State of U.P. and others** (11), the Supreme Court considered the question as to whether in terms of Article 243-ZG of the Constitution there is complete and absolute bar in considering any matter relating to municipal election on any ground whatsoever after the publication of the notification for holding municipal election. It was answered that the bar imposed by Article 243-ZG is two fold. Validity of laws relating to delimitation and allotment of seats made under Article 243-ZA cannot be questioned in any Court. No election to a municipality can be questioned except by an election petition.

(19) As far as the decision of this Court in **Sudesh Kumar Aggarwal’s case** (*supra*) is concerned, the same has been over-ruled

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(11) (1996) 6 S.C.C. 303

by the Supreme Court,—*vide* order dated 23rd October, 2002, passed in Civil Appeal No. 7054 of 2001, while observing as under :—

“This appeal is against the judgment dated 27th February, 2001. By this judgment a writ petition challenging the election to the post of President of the Municipal Council, Kapurthala has been allowed.

The elections were held on 10th June, 1998. In the election the appellant was declared as the successful candidate. Instead of filing an election petition as contemplated by Section 76 of the Punjab State Election Commission Act, 1994 (hereinafter referred to as ‘the Act’) read with Section 89 (1) (d) (iii), respondent no. 1 chose to file a writ petition. In our view, this appeal can be disposed of on a very short point.

Under Section 74 of the Act no election can be called in question except by way of an election petition. Apart from this, Article 243-ZG of the Constitution of India also provides that a challenge to an election can only be in the manner provided under any law made by the Legislature of the State. The law laid by the Legislature is the Act. The writ petition was thus not maintainable and should not have been entertained by the High Court. The reasoning given by the High Court for entertaining such a writ petition is, in our view, unsustainable.

We, therefore, set aside the impugned order and dismiss the writ petition. The appeal is accordingly allowed. There will be no order as to costs.”

(20) However, in **K. Venkatachalam versus A. Swamickan** (*supra*), the Supreme Court has held that if the elected member of the Legislative Assembly is lacking the basic qualification under Article 173 (c) of the Constitution of India and Section 5 of the Representation of People Act, 1951, in that situation the High Court can also exercise

its extraordinary jurisdiction under Article 226 of the Constitution for declaring the election of such member as void. It has been observed that Article 329 (b) does not clearly bar the jurisdiction of the High Court to entertain a petition challenging the election of a returned candidate and the said extraordinary jurisdiction can be exercised when there is any act which is totally against a provision of law or violates the Constitutional provisions. In that case, a person was elected as Member of the Legislative Assembly by impersonation, when he was not even the elector or voter of that constituency. In view of these facts, the Supreme Court upheld the order of the High Court setting aside the election of that Member in exercise of the extraordinary jurisdiction under Article 226 of the Constitution.

(21) A Constitutional Bench of this Court recently in **Prithvi Raj versus State Election Commission, Punjab and others (12)**, (*supra*), while re-considering the earlier Full Bench decision of this Court in **Lal Chand versus State of Haryana and others (13)**, (*supra*), has held as under :—

“28. The words and expression that appear in Article 243-ZG (b) of the Constitution must be strictly construed and any interpretation beyond the simple grammatical connotations of the words and expressions appearing therein would be impermissible. The word “election...”, and the expression... “called into question...”, used in Article 243-ZG (b) of the Constitution, clearly postulate that where an election can be called into question by way of an election petition, presented before such authority and in such manner as is provided for by a statute enacted by the Legislature of a State, challenge to such election i.e. calling in question the election, would have to be made by way of an election petition, filed before an Election Tribunal. In such a situation, the High Court, in the exercise of its discretion, under Article

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(12) 2007 (3) RCR (Civil) 817

(13) 1998 (2) PLR 640 (F.B.)

226 of the Constitution of India would relegate the petitioner to his remedy of filing an election petition.

29. However the High Court's jurisdiction to issue an appropriate writ, order or direction to further the cause of an election would not be affected, in any manner, as such a petition does not call into question an election. A petition, seeking an expeditious conclusion of an election, or filed with the object of facilitating the conduct of an election, would not be a cause, calling into question, an election and, adjudication, thereof would not be declined, by relegating the aggrieved petitioner to the remedy of filing an election petition. Thus, the words, appearing in Article 243-ZG (b) of the Constitution, clearly postulate that the legislative intent expressed therein, would come into operation only where a petition discloses a grievance, that calls into question an election.
30. The above exposition requires further elucidation. If the grievance put forth, falls within any of the grounds enumerated, for the filing of an election petition under Sections 89 and 108 of the Election Commission Act, Article 243-ZG (b) of the Constitution would come into play, and the grievance urged, would have to be redressed by filing an election petition, after the conclusion of the election. The High Court, would in the exercise of judicial restraint, relegate such a petitioner to his remedy of an election petition. This exercise of judicial restraint cannot be equated with lack of or bar of jurisdiction. Thus, the Full Bench, in **Lal Chand's case** (*supra*) did not commit any error of law, while holding that Article 226 of the Constitution, being an integral part of the basic structure of the Constitution, could not be diluted and exercise thereof could not be barred by any provision of the Constitution of India. The judgments of the Hon'ble Supreme Court in Punnuswami's case and

**Mohinder Singh Gill's case** (*supra*), were apparently not brought to the notice of the Full Bench. The principle of judicial/jurisdictional restraint enunciated therein was apparently not placed before the Full Bench.

31. xxx

32. xxx

33. An appraisal of the provisions of Article 226 of the Constitution, and the judgments of the Hon'ble Supreme Court, as noticed herein above, in our considered opinion, clearly postulate that once the electoral process commences, with the issuance of a notification, under the Municipal Act, any grievance, touching upon an "election" would be justifiable, only by way of an election petition. Interference by courts in election matters, after the commencement of the election process, would not be permissible, except to the limited extent noticed above.

34. As regards the second question, the Full Bench in **Lal Chand's case** (*supra*) has held that the provisions of Article 243 of the Constitution would have to be read down and subject to Article 226. This interpretation in our considered opinion negates the ratio in **Mohinder Singh Gill's case** (*supra*). In our considered opinion, a harmonious interpretation to these provisions, as assigned by the Hon'ble Supreme Court in Mohinder Singh Gill's case (*supra*), while interpreting a similar provision, namely, Article 329 (b) of the Constitution, and as explained, herein above, would suitably resolve this apparent conundrum of constitutional interpretation. Article 243 ZG (b) of the Constitution, cannot be read down or held to be *ultra vires* of the provisions of Article 226 of the Constitution of India. The provisions of Article 243 ZG (b) of the Constitution have to be read in the light of the principles of law, as set down in **Mohinder**

**Singh Gill's case** (*supra*), and the judgments referred to in the preceding paragraphs, namely, that the High Court would not entertain a challenge "calling in question" an "election." Challenge to an election, would be postponed, to a time and stage after the conclusion of the "election" and then also by an election petition, a High Court would, in the exercise of judicial restraint, postpone judicial review to a stage after the Election Tribunal adjudicates the election petition. The power of a High Court, under Article 226 of the Constitution of India would, however, be available, where exercise of the said power subserves the progress of the election, facilitates its completion and is exercised to further the election process. One should not forget that the statutory mandate to the authority under the Election Commission Act is to conduct free and fair pool. For achieving that objective and in furtherance thereof, there is no fetter to achieve that objective by invoking extraordinary powers of this Court under Article 226 of the Constitution."

(22) Thus, by taking into consideration the various judicial opinions and the view of the Supreme Court, as expressed in various pronouncements, we are of the opinion that the High Court does not lack the jurisdiction to entertain the petition and to issue appropriate direction therein. However, the extraordinary power under Article 226 of the Constitution of India should be exceptionally and rarely exercised to the limited extent as explained in the decision of this Court in **Prithvi Raj's case** (*supra*). The present case does not fall under any of the said exceptions. In our opinion, the petitioner has the remedy of election petition to challenge the election of Respondent No. 5 to the office of Sarpanch of Gram Panchayat, Village Bhamian Khurd, Block Ludhiana-2, Tehsil and District Ludhiana.

(23) In view of the above, we are not inclined to entertain this writ petition and the same is, hereby, dismissed with liberty to the petitioner to avail his remedy of election petition.